

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

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In Re: ) Case No. 19-30088  
 ) Chapter 11  
PG&E CORPORATION AND PACIFIC )  
GAS AND ELECTRIC COMPANY ) San Francisco, California  
 ) Tuesday, December 19, 2023  
Debtor. ) 10:00 AM  
 )

SECOND MOTION FOR PARTIAL  
SUMMARY JUDGMENT OF ISSUES IN  
REORGANIZED DEBTORS OBJECTION  
TO CLAIM #2090 AND CLAIMANT'S  
RESPONSE THERETO FILED BY  
AMIR SHAHMIRZA [14007]

STATUS CONFERENCE REGARDING  
SECURITIES PLAINTIFFS' MOTION  
FOR THE APPLICATION OF  
BANKRUPTCY RULE 7023 AND THE  
CERTIFICATION OF A CLASS OF  
SECURITIES CLAIMANTS. FILED  
BY SECURITIES LEAD PLAINTIFF  
AND THE PROPOSED CLASS  
[13865]

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DENNIS MONTALI  
UNITED STATES BANKRUPTCY JUDGE

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PG&E Corporation and Pacific Gas and Electric Company

1 SAN FRANCISCO, CALIFORNIA, TUESDAY, DECEMBER 19, 2023, 10:00 AM

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3 (Call to order of the Court.)

4 THE CLERK: Good morning, Your Honor. Recording has  
5 started.

6 Court is now in session. The Honorable Dennis Montali  
7 presiding, calling the matter of PG&E Corporation.

8 THE COURT: All right. Good morning, Mr. Slack. Or  
9 good afternoon to you.

10 MR. SLACK: Good morning, Your Honor.

11 THE COURT: No name?

12 MR. SLACK: Richard Slack from Weil, Gotshal for the  
13 reorganized debtor, Your Honor.

14 THE COURT: All right. Good morning, Ms. Grassgreen.

15 MS. VILLEGAS: Good morning, Your Honor. Debra  
16 Grassgreen, Pachulski Stang Ziehl & Jones, on behalf of Baupost  
17 Group Securities, LLC.

18 THE COURT: Scared everybody away, Mr. Slack. You're  
19 the only one. Only Ms. Grassgreen? I don't know. Must've  
20 prodded them. Doesn't anybody else want in?

21 THE CLERK: Yes. They are raising hands now, Your  
22 Honor.

23 THE COURT: Okay. All right. Mr. Catalina, I sort of  
24 expected you.

25 MR. CATALINA: Good morning on the west coast and

PG&E Corporation and Pacific Gas and Electric Company  
1 afternoon on the east coast, Your Honor. Frank Catalina for  
2 the RKS claimants.

3 THE COURT: All right. Ms. Jatharow (sic) -- Garato  
4 (sic).

5 MS. JARASHOW: Good morning, Your Honor. Kizzy  
6 Jarashow from Goodwin Procter on behalf of MML Investment  
7 Advisors, LLC.

8 THE COURT: All right. Mr. Hamilton, I expected you,  
9 so good morning.

10 And Mr. Palmieri, I don't -- I don't recognize your  
11 name. Who are you appearing for?

12 MR. PALMIERI: Good morning, Your Honor. Michael  
13 Palmieri from Friedman Kaplan Seiler Adelman & Robbins. Also  
14 for Baupost with Ms. Grassgreen.

15 THE COURT: I'm sorry. For which one?

16 MR. PALMIERI: For Baupost, along with Ms. Grassgreen.

17 THE COURT: Oh, okay. So let me just make a couple of  
18 statements and then we'll turn to the business.

19 MR. HAMILTON: Your Honor, Joshua Hamilton for the  
20 reorganized debtor from Latham & Watkins.

21 THE COURT: Yeah. I recognized you a moment ago, Mr.  
22 Hamilton. I'm sorry, you didn't hear me.

23 MR. HAMILTON: Oh.

24 THE COURT: Mr. Slack, thank you for the -- sort of  
25 the summary of all the other stuff going on. I was aware of

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1 the flurry of filings and all the various omnibus objections  
2 coming in. It will come as no surprise that I haven't pored  
3 over the thousands of pages that were filed in the last few  
4 days, but I am generally aware of what you said and I  
5 appreciate the status report on the -- on progress with the ADR  
6 efforts. And I don't think we need to talk about that, and  
7 your observations about whether you think we really need a  
8 class action, I think, are more aspirational than action items.  
9 I don't even see counsel for PERA on the call, which is a  
10 surprise, but I -- unless you scared them off.

11 So the sense I get from the filings from most of the  
12 other respondents, but including PERA is that -- although  
13 I'm -- it sort of -- it doesn't seem right to me, but I'm  
14 willing to go with the ninety-day time period for responses and  
15 the forty-five-day reply. So by my calculation, if we adopt  
16 that, I would tell you what I would do is I would say that the  
17 oppositions to PG&E's -- well, we'll them motions or the  
18 objections. You know, I'm going to call them motions to  
19 dismiss, for lack of a better term, will be due March 15th and  
20 replies by April 30th, then the matter is submitted.

21 I'm really -- don't like doing that, but I appreciate  
22 the complexity of the matter. What I don't like doing is that  
23 means that I'm supposed to start thinking about making a  
24 decision in May. God knows when I do.

25 But Mr. Slack, I'm still uncertain about something.

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1 You have taken a pretty firm view on whether there is any  
2 discovery permitted. And all the other counsel, or at least  
3 three of them, seem to have some limited discovery entitlements  
4 that they are entitled to. Are you wedded to that, that I have  
5 to make a decision on that? Or are you willing to come up with  
6 some sort of an agreement on a limited discovery while we're --  
7 while they're doing their oppositions.

8 MR. SLACK: No, Your Honor, we're pretty firm. Your  
9 Honor's -- and I'm going to turn this over to Mr. Hamilton in a  
10 second. But we're pretty firm that the amendment and objection  
11 procedures specifically preclude the discovery. It was a  
12 negotiated point. Baupost, PERA, and RKS were parties to that.  
13 That was the sine qua non of that deal.

14 And while Baupost and PERA have now sort of backtracked from  
15 that, I would say that I think that RKS would agree that that  
16 order that Your Honor entered and they -- and the plain  
17 language of that order and the negotiations were such that that  
18 there is no discovery pending the motions to dismiss.

19 THE COURT: Well, then, and Mr. Hamilton, I understand  
20 you wanted to be heard on this, and I didn't mean to cut you  
21 off. As I say, I'd ask the question, but I'm assuming you and  
22 Mr. Slack have the same answer. Let me -- before I ask anyone  
23 else to weigh in on it, what I'm inclined to do -- well, first  
24 of all, I accept that under traditional class action, such as  
25 the pending PG&E case in the district court, there is a stay on

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1 discovery under the law. And we're kind of making it up here  
2 with the bankruptcy. We've already been through that. I won't  
3 bore you.

4 So here's what I'm inclined to do. I'm inclined to  
5 stick with the deadlines that I just said, March 15th and April  
6 30th, and call for, let's say, by January. Well, let me look  
7 up my calendar here for a minute.

8 January 15th, simultaneous briefs on the question of  
9 discovery limited, fifteen pages by January 15th. The debtor  
10 and anybody that agrees with the debtor, why there should be no  
11 briefing. Baupost, PERA, RKS, at the risk of saying one brief  
12 from all of you, I would say response and the matter's  
13 submitted. And if I need a hearing, I'll schedule one on an  
14 expedited basis. I'll read the briefs. My preference would be  
15 read the briefs, make a ruling. If I say no discovery, then  
16 that's my ruling and that's what the other side's stuck with.  
17 And if they want to do something about it, they can do it. And  
18 then we stick with that schedule.

19 If it turns out that the law requires me or I'm  
20 persuaded that I should allow briefing on -- excuse me, I  
21 should allow some limited discovery, I'll be flexible about  
22 counsel meeting and conferring and agreeing to tweak the  
23 deadlines, if appropriate. Obviously, it seems to me if I'm  
24 persuaded that there should be discovery, even if it's limited,  
25 then, obviously, I can't expect the respondents to file their



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1 oppositions if they're supposed to -- if they're entitled to  
2 get discovery.

3           So what I'm going to do is -- I'll repeat this again,  
4 but call this a tentative ruling and then I'll ask any of you,  
5 particularly the folks on the other side -- I can't imagine  
6 there's any real opposition to the new deadlines because  
7 everybody agreed to them. But I'll state it again, my ruling  
8 would be today to fix March 15th as the deadline to file  
9 oppositions to the -- what we'll call the PG&E motion to  
10 dismiss, and for PG&E to reply by April 30th, in which can then  
11 the matter will be submitted. But I probably will schedule a  
12 hearing.

13           But again, I'm sort of mindful of the volume and the  
14 amount of effort that we'll have to take, and I'll do it. And  
15 then, from fifteen days -- I mean, not fifteen days, but  
16 January 15th, I would get simultaneous briefs, pro-discovery  
17 and anti-discovery, fifteen pages submitted and I'll make a  
18 ruling.

19           MS. VILLEGAS: Your Honor, this is Carol Villegas,  
20 appearing on behalf of PERA from Labaton Sucharow. I apologize  
21 for the late appearance. We were having some technical  
22 difficulties on our end.

23           THE COURT: Okay. That's fine.

24           MS. VILLEGAS: And I just wanted to correct something  
25 that Mr. Slack said. PERA was not involved in the negotiation

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1 whereby maybe some folks agreed that discovery wasn't  
2 necessary. And we appreciate that Your Honor will give us an  
3 opportunity to brief that issue in January.

4 THE COURT: Okay. Well, I knew we'd hear from PERA.  
5 I didn't know who would be, but I'm glad you weighed in.

6 So I'll -- so then, across the board, starting with  
7 the respondents, not Mr. Slack or Mr. Hamilton for the moment,  
8 do any of you want to be heard on what I just called my  
9 tentative ruling?

10 MR. CATALINA: I'll start, Your Honor, if you'll grant  
11 me the --

12 THE COURT: Yeah, just state your name for the record.  
13 I know it, but --

14 MR. CATALINA: Sure. Frank Catalina for the RKS  
15 claimants. And I'll just say that our interest here,  
16 really, -- and it has been from day one since we've appeared  
17 before Your Honor -- is to get this thing moving forward. And  
18 it is on a track where it's moving forward, which is great.  
19 You know, we were happy to have a sixty-day period to oppose.  
20 And I understand Your Honor is inclined to grant the ninety  
21 days. And we'll obviously follow along with the schedule set  
22 by the Court.

23 My only concern is one that was kind of raised by Your  
24 Honor here. You said, well, with the ninety days and forty-  
25 five, now we're looking at it submitted in May. And then when

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1 am I going to have my decision? Our concern would be that now  
2 we're going a month into the future to submit the idea of  
3 discovery, and it will be some time beyond that. And as Your  
4 Honor noted, it'll be tough to keep the March 15th opposition  
5 deadline if we're briefing discovery in January and maybe  
6 getting a decision in February.

7 So from our perspective, when we did the order on the  
8 amendment procedures, it was contemplated that we would have  
9 this kind of legal sufficiency, we can call, it practice at the  
10 outset. And then we would move on to litigate the claims as  
11 they remain after that process. Our concern -- and I'll just  
12 state it for Your Honor. We want to keep this on the track  
13 moving forward. We feel like it's been put on that track. The  
14 amendment procedures were -- have done a good job of putting it  
15 on that track, and anything that will delay it further is  
16 something that we think is not in the interests of resolving  
17 these claims.

18 THE COURT: Well, I appreciate that. I have to say --  
19 I'll state this, that I looked at the calendar last night and  
20 early this morning. I thought, why don't I -- to myself, why  
21 don't I just make them brief this thing in the next fifteen  
22 days? But we do have people that observe the holidays. And I  
23 do remember, Mr. Catalina, the discussions about sixty days.  
24 And again, my instincts, not doing class action all the time,  
25 but doing bankruptcy stuff, is you move much more quickly.

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1 But that being said, I don't often get 115-page  
2 motions to dismiss, either. And so to some extent, I would  
3 like to be my old, more efficient self and say, this is all too  
4 fast, let's get it done in January. But that's obviously not  
5 fair. And certainly, if the law allows for discovery over the  
6 debtor's objection, I can't ignore it. So I appreciate your  
7 comment.

8 I'll tell you what. If the matter is submitted on the  
9 lengthy briefing on April 30th, I'm not going to announce a  
10 ruling on May 1st that says motion granted or motion denied.  
11 I'm going to do what I'm supposed to do. The thought is, if  
12 I've got literally thousands of pages, it'll take a little  
13 longer, but.

14 MR. CATALINA: Understood, Your Honor. And we just  
15 wanted to make the point that -- and again, ninety days isn't  
16 our first choice, but it is what it is. It's out there.

17 THE COURT: Well, there's a -- Mr. Catalina, there's  
18 a --

19 MR. CATALINA: 120 -- 120 or 150 or 180 days would --

20 THE COURT: Yeah. After a while --

21 MR. CATALINA: -- would be worse than 90.

22 THE COURT: -- it adds up, right?

23 MR. CATALINA: Yes. Yes.

24 THE COURT: But I got a better solution for you: go  
25 settle.

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1 MR. CATALINA: Well, Your Honor, I think I said this  
2 at one of the hearings, maybe six months ago. But you know,  
3 the best way to resolve the claims is to move forward with the  
4 claims resolution process, right?

5 THE COURT: No, I understand. And you -- we all know  
6 that.

7 MR. CATALINA: Some of the claims will be easier to  
8 settle when we get past this hurdle. But you know, that's  
9 our --

10 THE COURT: Does anyone else wish to be heard?

11 MS. GRASSGREEN: Good morning, Your Honor. Debra  
12 Grassgreen, again on behalf of Baupost Securities.

13 Your Honor, the time frame works just fine for us.  
14 We'd also be happy if you wanted to move it up a week on the  
15 discovery briefing. That's also fine for us. We're not trying  
16 to slow things down here. We disagree with the reading of your  
17 prior order and we'll be happy to brief it on the 8th or the  
18 15th. Whatever --

19 THE COURT: Well, I'm not --

20 MS. GRASSGREEN: Whatever works for you.

21 THE COURT: I'm not going to turn into a Scrooge. I  
22 mean, I'm not going to make people observe the holidays or --  
23 you know, I didn't make -- you know --

24 MS. GRASSGREEN: They're fairly narrow issues, Your  
25 Honor. But we think the schedule is fine. We did -- I will

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1 note -- and probably our case, as claimants, won't like this,  
2 but we did note the PG&E asked for sixty days on their reply,  
3 and we didn't have a problem with that either. So we're -- but  
4 we are perfectly fine with your schedule of March 15th and  
5 April 30th, and the 15th for the briefing. And we were not --

6 THE COURT: Okay.

7 MS. GRASSGREEN: -- deeply involved in the  
8 negotiations of that July order. We were tangentially involved  
9 and included, but we certainly read it a different way and  
10 we'll be happy to --

11 THE COURT: Well, it doesn't matter.

12 MS. GRASSGREEN: -- put that in the papers.

13 THE COURT: I mean, we're past that or we're past a  
14 lot of things.

15 So anyone else wish to weigh in?

16 Ms. Jarashow?

17 MS. JARASHOW: Yes. Good afternoon again, Your Honor.  
18 Kizzy Jarashow, Goodwin Procter, on behalf of MML Investment  
19 Advisors.

20 I won't belabor the point on -- we're fully supportive  
21 of Your Honor's tentative ruling and the dates that you  
22 proposed.

23 THE COURT: Okay. Well, I don't need anyone to say  
24 you're okay with it. It's just whether if anybody thinks that  
25 you want to fall on your sword and say it's a horrible outrage.

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1           Mr. Slack, that -- I mean, if you're confident about  
2 the discovery issue, you'll win on the briefing. So let's do  
3 this. I'm a little short-staffed because of the holidays, so  
4 I'll ask you, Mr. Slack and Mr. Hamilton, to do the -- be the  
5 scrivener here and just circulate a pretty standard order that  
6 just recites what I just said so it's in writing and it's on  
7 the docket.

8           So referring to your moving papers, what we'll call  
9 the motion to dismiss, for convenience, oppositions March 15th,  
10 reply April 30th. Then as a separate matter, parties to submit  
11 simultaneous briefs by January 15th on the question of  
12 discovery or not. All I want is that issue. Should I permit  
13 discovery or not? And I don't need a bunch of me too's from  
14 people who agree with the debtor. And I'm not going to direct  
15 counsel for the various respondents to coordinate a short brief  
16 on a short schedule. But please don't reinvent the wheel.  
17 Please, please just focus on the issue and on the matter being  
18 submitted at that time and I'll schedule a hearing if I need  
19 to.

20           One more point. And Ms. Villegas, maybe you can help.  
21 I mean, one of the things that threw me off is I anticipated  
22 this hearing was where is this motion to withdraw the  
23 reference? And I understand why you haven't filed one. And I  
24 don't need any further discussion. But that -- and I frankly  
25 understand your -- probably your frustration about why the

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1 Ninth Circuit can't make a ruling on the issue that's  
2 submitted. I'd ask the same question. I don't understand why  
3 it can't, either. But I also would hate to be bogged down on  
4 this process that we just discussed and out of the blue have a  
5 motion to withdraw the reference come in.

6 So is that something that's lurking out there or shall  
7 I assume it's kind of moved to the back burner for the time  
8 being? And I don't want -- I'm not asking you to reveal  
9 strategy.

10 MS. VILLEGAS: Sure, Your Honor. Carol Villegas,  
11 Labaton Sucharow for PERA.

12 We submitted a statement yesterday that said, for the  
13 moment we're not planning on filing a motion to withdraw the  
14 reference. It's difficult to know what our client is going to  
15 want to do once the Ninth Circuit comes down. It's certainly  
16 possible that the Ninth Circuit doesn't agree with us, and the  
17 district court will continue to not have jurisdiction, in which  
18 case I think things get a little more complicated with  
19 attempting to withdraw the reference. So I think we're kind of  
20 in a holding pattern right now, Your Honor, and we're happy to  
21 continue the process here in the bankruptcy court.

22 I think that no matter what happens with us in terms  
23 of whether we seek to withdraw the reference or not, this  
24 motion to dismiss claims objection process is going to  
25 continue. So I'm hoping it's not going to add too much of a



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1 burden for you if we decide to do that. But for now, we're  
2 just in a holding pattern.

3 THE COURT: Well, the burden -- as I told you at the  
4 last hearing, the best burden would be that that Judge Davila  
5 decide to withdraw the reference today. No, I'm only kidding.

6 MS. VILLEGAS: Well, it might make it easier for you,  
7 Your Honor, because, you know, then he can pick it up and look  
8 through all of the 4,500 pages of exhibits and make a decision  
9 that --

10 THE COURT: Right. I'm not trying to get out of my  
11 work.

12 MS. VILLEGAS: I understand.

13 THE COURT: And I don't know what's going to happen.  
14 Okay. Well, it's a closed subject for now. If you file a  
15 motion to withdraw the reference tomorrow, I'm not going to  
16 bite your head off for deceiving me. I'll take your word as an  
17 officer of the court that that's the present thinking. And I  
18 understand if the circuit weighs in or Judge Davila does  
19 something else, we'll all deal with that. Okay.

20 MS. VILLEGAS: Thank you, Your Honor.

21 THE COURT: Does anyone want to add anything further  
22 for today?

23 MR. HAMILTON: Your Honor, can I just --

24 THE COURT: Yes, sir.

25 MR. HAMILTON: -- clarify something?

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1 THE COURT: Yes, Mr. Hamilton.

2 MR. HAMILTON: Joshua Hamilton on behalf of PG&E.

3 With respect to the discovery, they've set deadlines.  
4 Can we -- the Court order that those are off, and there's no  
5 obligation to respond any of the discovery that was served  
6 either to PG&E or any third parties that they've already sent  
7 out?

8 THE COURT: Well, I hadn't thought about that. I  
9 guess that seems -- I mean, unless --

10 MS. GRASSGREEN: It's agreeable, Your Honor.

11 THE COURT: Okay.

12 MS. GRASSGREEN: We can hold it all in abeyance  
13 pending your ruling.

14 THE COURT: Well, okay. Ms. Grassgreen's concession,  
15 should that solve -- Mr. Hamilton, is there anyone else that  
16 has initiated any at the moment?

17 MR. HAMILTON: No, just Baupost, and we can --

18 THE COURT: Okay. Well, again --

19 MR. HAMILTON: -- include that in the order.

20 THE COURT: -- I like to think -- I like to think that  
21 all of you are -- and your colleagues that have been working  
22 with me for all these years now, we have -- people can be  
23 relied on and nobody's going to pull a fast one and I won't,  
24 either. And obviously -- okay. Well, I'm beating it to death.  
25 But Ms. Grassgreen made the concession that seems to solve the

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1 problem.

2 Okay. Well, then with that, happy holidays, everyone.

3 MR. SLACK: Your Honor.

4 THE COURT: Yes, sir.

5 MR. SLACK: Your Honor, one more issue. Just as a --  
6 just as a sort of a notice here. And that is, you may have  
7 seen that that PERA had filed -- I'm not going to characterize  
8 it, but a motion to be a designated class -- temporary class  
9 counsel or lead plaintiff or whatever they said. The response  
10 date for that is currently the week after Christmas. I think  
11 it's the day after Christmas.

12 We've initiated conversations with PERA to try to set  
13 a schedule. I expect that we'll be able to do that and PERA  
14 will be agreeable to a schedule here for that and a hearing,  
15 and we'll come back to you with that. But I guess there's at  
16 least the possibility that PERA is going to say, no, they want  
17 this -- they want the opposition to be right after Christmas  
18 and not set a schedule with us and then we'll have to come back  
19 to you. But again, I expect we'll be able to work that out  
20 with PERA, but I wanted to alert the Court that that's out  
21 there.

22 THE COURT: Well, but isn't PERA's motion already on  
23 our January calendar on a PG&E date?

24 MR. SLACK: Yes, it is. It's on a date that would  
25 require us to respond, you know, the day after --

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1 THE COURT: No, no. What I'm -- Mr. Slack, what I'm  
2 saying is we still have -- every two weeks, we have PG&E  
3 calendars and it's no big deal to move it two weeks. And if  
4 PERA is agreeable to that, that solves the holiday problem. If  
5 they would agree -- I'll let you work that out. But I --

6 MS. GRASSGREEN: Your Honor, I believe we'll be able  
7 to work something out. We are not scrooges, either, so we will  
8 work with Mr. Slack and figure something out that makes sense.

9 MR. SLACK: Yeah, we figured we'd be able to work it  
10 out, Your Honor. Again, we haven't -- we just haven't had a  
11 chance to fully connect.

12 THE COURT: I was listening to another argument  
13 recently, and one of the lawyers came up with a phrase that I'd  
14 never heard before. It's trying to squeeze an elephant into an  
15 ant hole. And so it's sort of -- and the metaphor kind of fit  
16 that setting. So I think worrying about when we have the class  
17 action designation label headed with all this other stuff is  
18 something worth worrying about. Anyway, not worrying about at  
19 the moment.

20 Gentlemen and ladies, happy holidays. Thank you for  
21 your time and I'll see you next year.

22 MR. SLACK: Thank you, Your Honor.

23 MR. PALMIERI: All right. Thank you, Your Honor.

24 MS. GRASSGREEN: Thank you, Your Honor.

25 THE COURT: Okay. Thank you very much.

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1 All right. Ms. Parada, I'm going to go off the camera  
2 for about a minute or two. You can bring in counsel on the  
3 other matter. I just want to take a second to take care of  
4 something here.

5 THE CLERK: Yes, Your Honor.

6 THE COURT: I'll be right back.

7 (Pause.)

8 MR. JACOBSON: Ms. Parada, is my audio working?

9 MR. RUPP: I can hear you, Mr. Jacobson, but I did not  
10 hear Ms. Parada.

11 THE CLERK: Oh, my apologies. I was on mute.

12 Yes, Mr. Jacobson, you can hear -- I can hear you.

13 THE COURT: Well, I was -- just came back in. I was  
14 going to tell Mr. Jacobson that I could hear him, too. So we  
15 all -- we can all hear you, Mr. Jacobson, so.

16 MR. JACOBSON: That takes care of the first anxiety  
17 for the day.

18 THE COURT: Let's let Ms. Parada call the case, and  
19 I'll get the appearances of counsel.

20 THE CLERK: Calling the matter of PG&E Corporation.

21 MR. JACOBSON: Good morning, Your Honor. Lawrence  
22 Jacobson for Komir, Inc and its representative, Amir Shahmirza,  
23 appearing on its motion for partial summary adjudication.

24 THE COURT: Okay. Mr. Lamb and Mr. Rupp, good  
25 morning.

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1 MR. LAMB: Good morning, Your Honor. This is Steve  
2 Lamb on behalf of the reorganized debtors.

3 MR. RUPP: Good morning, Your Honor. Thomas Rupp of  
4 Keller Benvenutti Kim on behalf of the reorganized debtors.

5 THE COURT: So Mr. Jacobsen, you want to reserve some  
6 of your thirty minutes?

7 MR. JACOBSON: I do. I'd like to split eighteen and  
8 twelve.

9 THE COURT: Eighteen and twelve? Okay.

10 MR. JACOBSON: I don't use all eighteen, I'd like to  
11 add it on to the twelve.

12 THE COURT: I'm not a stickler for these times. I'm  
13 going to give you one question first, so. And that is this.  
14 Look, I've been through a lot of paperwork in this case and  
15 photographs and diagrams. And I find one thing that's  
16 confusing me and maybe it's just terminology, but Mr.  
17 Shahmirza's testimony, I believe, in a deposition and so on.  
18 He was describing the simple process that he called the -- now  
19 I'm forgetting the word that he used for the repositioning of  
20 the towers that changes the alignment. That's right. His word  
21 was "alignment".

22 And so I was thinking about, well, what does he mean  
23 by "alignment"? And so you know, if this this project is right  
24 near SFO. And when you come in and out of SFO, you see these  
25 numbers on the runway. If you're on runway 280, it's because

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1 it's lined up with Compass Rose 280, and the reciprocal of 280  
2 is 11 -- 101 100 and so on. And so instead of having six power  
3 lines on three poles, just have -- just pretend there's one  
4 pole and one power line that goes across the Komir property.  
5 What is the compass rose alignment of it now versus before?

6 So for example, if it were parallel to runway 280, it  
7 would run through -- it would run north. I mean, it's west by  
8 northwest 280 on a compass, and the reciprocal is the reverse  
9 of that. And yet I didn't -- no one will tell me that or I  
10 don't see that in the -- in the drawings that I can interpret.  
11 So can you tell me if we have any evidence in the record for  
12 the alignment in terms of directional, specific direction  
13 before the towers were moved and after? And it seems to me,  
14 for him to say there was a realignment, he ought to be able to  
15 say that one of the towers was moved so that the compass rose  
16 or the compass alignment of the wire changed.

17 Now, if both towers moved and there was no realignment  
18 at all, which is strange, then -- well, no, there would be.  
19 And so I'm only talking about the position that might change  
20 the angle of the wire, not the height. I understand that the  
21 difference about where the -- was the power sag made the power  
22 lines closer to the ground. But I want the compass alignment  
23 changed. Is there anything in the record that tells me that or  
24 do I have to go speculate about it?

25 MR. JACOBSON: I'd say a couple of answers, several

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1 answers. One is it's not relevant to the determination of this  
2 motion.

3 THE COURT: Well, I disagree with you, but go ahead.

4 MR. JACOBSON: Well, I'd like to speak to you at some  
5 length about the tax issue because I think that is the  
6 dispositive. Second --

7 THE COURT: But I want to know about the wire  
8 position. I don't want to know about -- I know about the tax  
9 issue. It's fully briefed. What was the position of the wire  
10 or wires, the six or one matter, before and after? If you  
11 don't know the answer, I'll accept that that's -- you don't  
12 know the answer. But to me, that's a critical question.

13 MR. JACOBSON: The evidence in the record is that all  
14 three existing towers previously were destroyed. They were  
15 removed. They don't exist anymore. New towers were  
16 constructed at locations, according to PG&E and consistent with  
17 Shahmirza's position, fifteen to twenty feet forward and  
18 laterally, so --

19 THE COURT: Well, that's two movements. Forward and  
20 laterally --

21 MR. JACOBSON: Yes.

22 THE COURT: -- is two movements.

23 MR. JACOBSON: Yes, it is.

24 THE COURT: So leave aside the forward for the moment.

25 MR. JACOBSON: Yes.



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1 THE COURT: But which -- where do I see in the record  
2 that there was a fifteen-foot lateral move of at least one of  
3 the towers? I mean, you could have -- you could have moved  
4 both towers. And so the wires would be perfectly parallel as  
5 though they were, but they'd be in a different overhead  
6 position. If you moved one of them, the angle would change,  
7 and the wire would go from the new position to the old tower.  
8 But which is it?

9 MR. JACOBSON: Well, part of it is there is -- it is  
10 difficult to look at the photos and come to conclusions about  
11 that movement. What's in the record is that they were moved  
12 forward near the boundary of Komir's property and were moved  
13 left with the distance. And it does not distinguish between  
14 the portion that is forward or lateral. But PG&E's own  
15 statement is that they were moved fifteen to twenty feet.

16 THE COURT: Well, when you say left, left from which  
17 starting point?

18 MR. JACOBSON: Good point. If you were at PG&E's  
19 substation where the towers were located looking southerly  
20 towards Komir's property, they're moved forward and left.  
21 Obviously, if you're looking from Komir's property, they're  
22 moved nearer and right.

23 THE COURT: No, but were they both moved left?

24 MR. JACOBSON: They were -- all three moved left.

25 THE COURT: No, but I'm simplifying. I'm assuming

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1 that all three and six wires move in parallel. So I'm assuming  
2 we can do the analysis with just one tower and one wire. We  
3 can do six. It's the same. But if you tell me that everything  
4 moved to the left from looking south, okay. That would be a  
5 change in the position of the tower overhead. I mean, excuse  
6 me, the wire, if one were standing in the middle of the Komir  
7 property right?

8 MR. JACOBSON: Yes.

9 THE COURT: Okay.

10 MR. JACOBSON: It moves it towards the Bayshore  
11 Freeway, and it --

12 THE COURT: But moving it forward or left doesn't  
13 change the angle. In other words, if I'm using my metaphor of  
14 the runway, if runway 280 was lengthened or shortened, but  
15 still the airplanes took off on a compass rose of 280, there'd  
16 be no change for certain purposes. And for these purposes, if  
17 Mr. Komir's -- or Mr. Shahmirza is standing under the wire on  
18 his property and it moves to a different position, that's a  
19 change. If it's --

20 MR. JACOBSON: Right.

21 THE COURT: If the tower is moved such that the  
22 position of the wire doesn't change, then it doesn't change.

23 MR. JACOBSON: Well, but his testimony is detailed  
24 about the geometric or the math aspect of that. If you move  
25 the tower to a different location, and it's conceded that it

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1 moves forward and sideways -- and the towers that were there  
2 don't exist anymore. So now we're going to connect lines to  
3 new towers and new positions.

4 So as a matter of geometry, if you now connect the  
5 lines that used to run to the position of the old towers to the  
6 position of the new towers, those lines are necessarily  
7 geometrically, mathematically in a different place. They do  
8 not cross the property at the same location and they're not at  
9 the same height.

10 THE COURT: I don't -- and see, this is where -- this  
11 is what I asked the question to begin with. I can't tell from  
12 the testimony or what the evidence -- what the change was  
13 because you keep saying forward and back. And that doesn't  
14 mean that the angle of the wires would have changed at all. It  
15 doesn't mean it at all.

16 If you move the laterally left or right, then by  
17 definition, the angles will change. But so I'm trying to  
18 figure out whether we have a factual dispute or not. And it  
19 seems to me that at the moment there isn't -- I mean, look, my  
20 point is I understand. You keep saying that the towers were  
21 destroyed, but destroying a tower and replacing it with a  
22 similar tower in a different position, the legal consequence to  
23 me is whether that changes the easement over his land, not  
24 whether an old tower got destroyed and a new tower got  
25 constructed. It's where is the position?

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1           Because the towers aren't on his property, the  
2 imposition on his property is the angle and the height of this  
3 high-powered line, these six high-powered lines that go across  
4 his property. And I cannot, for the life of me, know what the  
5 actual impact was in either event. Now, if -- I can't go out  
6 and do a site inspection, but I won't know where the old  
7 tower -- the old wires were, so that doesn't help, either.

8           Well, let me just leave it at that and let you make  
9 your argument. My point is, at the moment, I cannot determine  
10 whether the old position and the new position were  
11 insignificant and should be ignored, or were significant and  
12 might indeed require PG&E, perhaps, to have a measure of  
13 damages on what it caused because I -- because of the rest of  
14 the argument that I think you've made, and maybe that PG&E  
15 hasn't persuaded me of a contrary argument. So I don't want to  
16 use the whole morning. I want you to make the argument that  
17 you prepared. But let me just -- you understand that I'm  
18 struggling with something that I don't think is clear from the  
19 record. If Mr. Lamb believes it clearly is, he'll have a  
20 chance to make that pitch.

21           MR. JACOBSON: Then let me segue from your question to  
22 the beginning of my argument this way. And I'd say  
23 preliminarily, I do not use notes. I do not discuss facts of  
24 cases and I do not read from material. But today I'd like to  
25 do all three of those things.

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1 THE COURT: Okay.

2 MR. JACOBSON: The significance of the relocation of  
3 the towers and, in turn, geometrically, the wires is the it had  
4 on Komir's consent. Komir had allowed -- had consented to  
5 PG&E's use, as your memorandum opinion previously reflected,  
6 from the time he owned it until 2018 when they undertook the  
7 relocation. It didn't affect him and his use. But they then  
8 removed the old tower. They engaged in this relocation  
9 process. And when he realized what they were doing, he went to  
10 them and said, I'm not consenting to this. What are you doing?  
11 Talk to me. You need an agreement from me to do this.

12 THE COURT: Wait, hold on one second, Mr. Jacobson.

13 MR. JACOBSON: Sure.

14 THE COURT: I locked the door because I thought you  
15 were already gone.

16 Okay. Go ahead. Go ahead.

17 MR. JACOBSON: So the significance of the relocation  
18 is the impact, the revocation of his consent. And these  
19 measurements and directional angles are not in and of  
20 themselves significant with respect to his revocation of  
21 consent. That is the critical aspect of the relocation. And  
22 he went to them and spoke to them. The representative of PG&E  
23 says we're -- well, let me back up.

24 When they came to him initially, they said, we want to  
25 make some public safety improvements to the existing facility.

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1 That's a writing that's in the record. They then said, to  
2 enable us to improve what's there for public safety, we want to  
3 lease this part of the space right next to that so we can do  
4 the improvements. They brought out some base rock and  
5 materials and started whatever work they were doing.

6 When he realized in September that they weren't  
7 improving something at the substation, but they were removing  
8 the towers and repositioning the lines, that was a new and  
9 different circumstance. And he went to them and asked about  
10 it. And the representative initially says, well, it'll lower  
11 the lines by eleven feet. There's nothing in the record,  
12 Judge, that repudiates that. There's --

13 THE COURT: Well --

14 MR. JACOBSON: -- nothing.

15 THE COURT: But Mr. Jacobson, there's nothing in the  
16 record that says they actually did, in fact, lower the lines by  
17 eleven feet either, is there?

18 MR. JACOBSON: Well, yes. You have Shahmirza, as the  
19 owner, representative testimony in real time. He observed the  
20 fact of the lowering. He saw it.

21 THE COURT: I don't remember that testimony. But if  
22 it's in there, I'll accept your word for it.

23 MR. JACOBSON: It is.

24 THE COURT: So does that mean -- does that mean if Mr.  
25 Shahmirza and I went out there tomorrow, he could tell me and

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1 he could point to the wire above that he knew what used to be  
2 eleven feet higher in a different -- slightly different  
3 position.?

4 MR. JACOBSON: Yes.

5 THE COURT: Now, and he knows that that accurately?

6 MR. JACOBSON: Well, he doesn't know it to the eleven  
7 feet. He knows it was lowered enough to visually observe the  
8 difference.

9 THE COURT: Well, how -- but how could an individual  
10 standing on the ground know down to a foot or eleven feet, the  
11 height of the wire above him compared to what it was six months  
12 earlier? I mean, how can anybody possibly know that? He  
13 doesn't measure it. He didn't take out a tape measure. He  
14 would have been electrocuted.

15 MR. JACOBSON: Well, the electrocuted part is going to  
16 be significant later on in our discussion. But first of all,  
17 it was only seventy feet. So it's not like you're measuring 11  
18 feet out of 500 feet. And these towers have markers every -- I  
19 think it's every ten feet.

20 THE COURT: Yeah, the towers do, but not the wire that  
21 sags in between those towers.

22 MR. JACOBSON: Stand there. I've done it over and  
23 over again.

24 THE COURT: How far apart are the two towers?

25 MR. JACOBSON: Three towers.

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1 THE COURT: Well, okay. But there's three towers each  
2 end. But how far apart are they? They're on opposite sides of  
3 his property. So I mean, what are they in yards? How far in  
4 yards are those groups of towers apart?

5 MR. JACOBSON: Fifteen feet, twenty feet.

6 THE COURT: The towers?

7 MR. JACOBSON: Yes.

8 THE COURT: No. The wire -- the power line only goes  
9 fifteen feet between two towers?

10 MR. JACOBSON: No, no, no. I thought you asked me how  
11 close the tower is to Komir's property.

12 THE COURT: No, no. There are towers on opposite  
13 sides. Two sets of towers.

14 MR. JACOBSON: Yeah.

15 THE COURT: Okay. How far are those two sets of  
16 towers apart?

17 MR. JACOBSON: Oh. Like 350 feet.

18 THE COURT: Okay. So if he's standing in the middle  
19 of his property, he's got 175 feet each way to the towers and  
20 he's able to know down to 10 feet how high the cables are above  
21 his head?

22 MR. JACOBSON: No.

23 THE COURT: Okay. Then he's smarter than I am.

24 MR. JACOBSON: No, you don't stand in the middle and  
25 measure against 350 feet. You stand by the fence where the



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1 tower is, and you can see where it started and where it comes  
2 down.

3 THE COURT: I don't think you understood my question.  
4 I take your word for it that the towers -- two sets of towers  
5 are roughly 350 feet apart from one another.

6 MR. JACOBSON: Yes.

7 THE COURT: And the cables or the wires between those  
8 towers go over his property, and he could stand on his property  
9 and estimate how high above his head the power lines are. And  
10 you said he -- if he knew it was -- he knows what seventy feet  
11 is. He knows that it came down eleven feet. I guess I have  
12 trouble understanding that. But go back to your argument. I'm  
13 guilty of interrupting you, and that's not fair to you. Go  
14 ahead.

15 MR. JACOBSON: No, the most important thing here is to  
16 deal with your thinking and --

17 THE COURT: Yes. Right. And so my thinking is that  
18 he could -- if PG&E had lengthened the -- to 450 feet the span  
19 of the cables and just move the towers farther apart, it  
20 wouldn't have had any impact on him. And yet, you might think  
21 it did. And I don't know how it would. So if his property  
22 doesn't have any towers on it, but it has cables, wires over  
23 it, and the owner of the two sets of towers lengthens them,  
24 what difference does it make? But and that's why, to me, it  
25 doesn't make any difference.

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1 But if the owner lowers the height, that's  
2 significant. Or if he moves the towers to the left or to the  
3 right, that changes the angle by which the wires cross the  
4 property. And that might indeed be wrongful and compensable if  
5 it's not justified. And I accept that his position is I didn't  
6 agree to that.

7 And so I'm trying to struggle to figure out, except  
8 that he didn't agree to it, what is it that happens that he's  
9 suffering from? And in layman's terms, I say, well, maybe the  
10 wires are lower and maybe the realignment, using my compass  
11 rose example, maybe they're not on a 280 100-degree compass  
12 rose reciprocal. Maybe it's a different angle and therefore  
13 that has an impact. Beyond that, I don't have any clue what  
14 the consequences are. So that's what I'm struggling with,  
15 okay?

16 MR. JACOBSON: Well, on that point, maybe we do need a  
17 site inspection, because I've been there many times. You stand  
18 there --

19 THE COURT: You weren't there before 2018, were you?

20 MR. JACOBSON: No, but I'm -- in terms of visual  
21 observation, you can stand at the north end. You can look at  
22 those towers. You can see the marks against the tower where  
23 the lines start. You can visually get a perspective of the  
24 height. And so Shahmirza had been there for seventeen years  
25 before 2018. He knew where the towers were. He knew he could

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1 have a length perception of where they were relative to a  
2 tower, relative to the other benchmarks in the area. And his  
3 testimony is, no, I didn't measure it. I do not know exactly.  
4 But the PG&E representative told me it was eleven feet. I  
5 could see it was changed significantly, and their eleven-foot  
6 statement to me seemed right.

7 THE COURT: Okay. But the fact of the matter is, Mr.  
8 Jacobson, whether you and I go out there or we get a surveyor  
9 or whoever, however you measure heights of cables, somebody  
10 qualified and not to get electrocuted could say, here is the  
11 current height of these wires. And I understand that the  
12 height may change as the temperature changes, but PG&E knows  
13 how to build power lines and knows how to maintain the towers  
14 and the wires.

15 Somebody with competence could tell us what is the  
16 existing height and -- but no one, presumably, unless there's  
17 accurate drawings and records, can tell us what the height was  
18 before 2018. And for Mr. Shahmirza to say, well, I remember  
19 those wires were higher, that's fine. I don't question if he  
20 says that, but that doesn't tell me how high they were unless  
21 somebody with some credible historical evidence can do so.

22 So if I ask PG&E, give me some proof as to the actual  
23 physical position of the towers and the actual height of the  
24 wires before 2018 and compare them to the actual position today  
25 using the compass or GPS or something for position and

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1 measure -- some measuring device for the height, then might  
2 have a better -- I might have a better answer to this question,  
3 so.

4 MR. JACOBSON: Okay. The issue --

5 THE COURT: I mean I got to check -- I got to tell  
6 you, if the alignment was insignificant and the height change  
7 was minimal, it might mean you got a very interesting case, but  
8 no measurable damages. And on the other hand, if there is  
9 evidence that both change or either of those variables change,  
10 and it translates to something that in -- that is inconsistent  
11 with his rights, then, of course, he should be compensated for  
12 it. I don't -- you don't really believe that PG&E should be  
13 ordered to remove move the towers again, do you?

14 MR. JACOBSON: Well, and I think that is confusion  
15 from the PG&E papers. We are not saying that they have to move  
16 the towers, but it's not difficult to move the lines so that  
17 you have -- instead of going directly across, you go sideways  
18 up the side and across. That's not a complicated issue.

19 But would you agree with me that this discussion about  
20 heights and angles and runway positions and such only matters  
21 if PG&E has a right to be there in the first place?

22 THE COURT: Well, yes.

23 MR. JACOBSON: If they don't have it right to be  
24 there, it doesn't matter.

25 THE COURT: Well, I mean, that means --

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1 MR. JACOBSON: If (indiscernible) --

2 THE COURT: That means if you -- if I agree with you  
3 that, since they didn't pay the taxes, we're done.

4 MR. JACOBSON: Yes.

5 THE COURT: Okay. It's over. Well, okay. But that's  
6 a legal argument.

7 MR. JACOBSON: That's what we're here for.

8 THE COURT: Okay. Okay.

9 MR. JACOBSON: And on that --

10 THE COURT: I mean, look, Mr. Jacobson, you've made an  
11 argument in that issue and the other side has. And I intend to  
12 review both arguments again and decide. But I have to also  
13 think about, well, what's the consequence to come here if I'm  
14 not persuaded that the tax history is dispositive? And you  
15 seem to -- you're not -- I mean, you're arguing that if I don't  
16 accept that legal argument and I deal with the more traditional  
17 prescriptive easement issue, then the question is whether this  
18 was an incidental move or something that gives -- can give rise  
19 to monetary damages.

20 Again, the notion that PG&E can reroute the line is  
21 not the point. If there's a monetary damage for the movement  
22 that maybe is established, then that's the outcome, isn't it?

23 MR. JACOBSON: We're looking at this much differently.

24 THE COURT: Yes, we are.

25 MR. JACOBSON: The question is whether PG&E has a

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1 legal right to have had those lines there. Komir's approach  
2 was to first challenge PG&E's aggressive position that it had  
3 rights under recorded easements. So it seemed to me that if we  
4 could address that issue and decide if they had a right to be  
5 there based on recorded documents or not, we would advance the  
6 analysis. We made that motion, and the determination was that  
7 the condemnation extinguished all rights under the recorded  
8 easements.

9 THE COURT: Right.

10 MR. JACOBSON: PG&E made a counter motion saying,  
11 well, if we lose that, we want to argue that we had  
12 prescriptive rights. And that motion was denied. So the next  
13 step in the analysis seemed to me to be, let's set up a motion  
14 that presents to you the converse, whether they have a legal  
15 right to be there based on prescription. And that is the issue  
16 that I want to discuss with you today.

17 THE COURT: Yeah, but there's an in between. They had  
18 a -- they had a right to be there by consent for eighteen  
19 years, right?

20 MR. JACOBSON: Okay.

21 THE COURT: Isn't that true?

22 MR. JACOBSON: Yes.

23 THE COURT: Okay. Okay. So let's not forget that  
24 step. So then in 2018, your argument is that what PG&E did was  
25 not permitted and there was no -- there was no -- the time

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1 didn't run to establish a prescriptive easement. So they're a  
2 trespasser or some other thing. They are violating what was  
3 previously a right as consensual. And that's why your client  
4 filed the suit, and the bankruptcy stopped it. And that's why  
5 we're here. And I don't disagree with that.

6 MR. JACOBSON: So but here's my point in terms of  
7 where we are in sequencing the analysis and disposition of the  
8 issues. We need to decide now PG&E's fall back argument that  
9 it has prescriptive rights. We are not discussing now on that  
10 issue the consequence of their not having prescriptive rights,  
11 about the lines there and whether they can move them and what  
12 are damages if they can't.

13 We first have to decide whether any lines at any  
14 angles are entitled to be there. We'll decide the issues about  
15 moving towers, about damages, about angles, about -- whatever  
16 those issues are, those are for the trial we have.

17 THE COURT: What would we have -- but Mr. Jacobson,  
18 what would we have -- what would we do with the trial?

19 MR. JACOBSON: We would --

20 THE COURT: We'd measure the wires?

21 MR. JACOBSON: No, no. You would then deal with  
22 PG&E's arguments about, well, we have no right to have those  
23 here. But we need them here, so we need to decide how much we  
24 need to pay you to continue to have them here. And we --

25 THE COURT: Okay.

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1 MR. JACOBSON: -- exchanged expert witness appraisals  
2 on that point.

3 THE COURT: Okay. So --

4 MR. JACOBSON: They differ significantly, but that  
5 will be the subject for trial.

6 THE COURT: So do you want -- are you saying that if I  
7 accept your argument, that the -- because PGE didn't pay the  
8 real property taxes, they have no rights, period?

9 MR. JACOBSON: Right.

10 THE COURT: But if I say that -- I reject that  
11 argument and I say the fact that they -- that PG&E didn't pay  
12 the taxes is not dispositive, what's left? Just the trial on  
13 damages? In other words, if I reject your argument today about  
14 property taxes --

15 MR. JACOBSON: Right.

16 THE COURT: -- because PG&E has argued that that's not  
17 dispositive because they -- both sides have gone through the  
18 cases that kind of split the hair between de facto taking of  
19 the property versus that.

20 Okay. So if I don't buy your argument, on that  
21 argument on that issue, is there anything else to do other than  
22 go to trial?

23 MR. JACOBSON: We go to trial on the issue of whether,  
24 given the issues about which PG&E argues in its opposition  
25 there are factual issues, and they say there are factual issues



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1 about every legal argument it presents, if you look --

2 THE COURT: I know, but the fact -- but that gets back  
3 to the point that I made in the first place. What are the  
4 factual issues? Maybe I misled you by giving you the  
5 impression that I'd made up my mind on the property taxes  
6 because I wanted to focus on the physical question.

7 So I'll ask it again. If I rule in your -- against  
8 you on the property tax issue, we have a trial that determines  
9 whether the towers were moved or the wire height was adjusted  
10 in a way that was inconsistent with what was consensual before  
11 then; is that right?

12 MR. JACOBSON: Well, that and other issues. The  
13 normal prescriptive easement issues about --

14 THE COURT: No, what -- well, what -- no. There's no  
15 prescriptive easement because the time didn't run. It's a  
16 trespass. Oh, they don't --

17 MR. JACOBSON: Yes. Yeah, you're right.

18 THE COURT: What is the consequence -- what is the  
19 consequence of somebody who doesn't have an easement for  
20 putting the -- moving a tower and moving a power line? And the  
21 consequences seem to me is what are the money damages to  
22 compensate the landowner?

23 MR. JACOBSON: I think PG&E would say to you that the  
24 issue for trial if you do not grant this motion based on the  
25 tax -- nontax payment, would be whether they do have a

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1 prescriptive easement, whether the changes were -- whether  
2 there is a prescriptive easement, when it was established, was  
3 it established against predecessors? Was it did it carry over?  
4 Did it change? What's the difference? Can we move them? And  
5 I would say to you -- and in that trial would be whatever is  
6 the outcome on those issues in terms of materiality or not and  
7 such, the final issue is damages or other remedies. So but  
8 that's not for today. That's for trial.

9 THE COURT: Okay. I'll tell you what. I ended up  
10 with this long discussion. And Mr. Lamb and Mr. Rupp have been  
11 quiet. I'm going to depart from the original suggestion and  
12 let them be heard, and then I'll come back to you. And I'm not  
13 going to -- the clock isn't running against you. I'm going to  
14 give this the time it needs. But I've got to clarify this, and  
15 I'll ask Mr. Lamb to clarify what he believes is to be the  
16 factual history and what he believes the issues for today and  
17 the issues for the trial are.

18 So Mr. Lamb, please take over.

19 MR. LAMB: Thank you, Your Honor. Relating to the  
20 issue that I think you raised initially, there are other  
21 declarations to include the Jadhav declaration and the Sosensky  
22 declaration. But the principal one is the Raines declaration  
23 (phonetic), which relates to the LIDAR, which is the light  
24 detecting --

25 THE COURT: Yeah. Yes.

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1 MR. LAMB: And if you look to paragraph 13 of that  
2 particular declaration, he testifies is that the replacement  
3 towers were replaced ten to twenty feet south, not fifteen to  
4 twenty. Ten to twenty feet south from the northern property,  
5 and they were all within the transition station. He then  
6 testified that a comparison of the alignment of the  
7 transmission lines from 2012, which was before they were moved,  
8 the towers were moved in 2018, is shown in Exhibits A-1 and A-  
9 2, based on the LIDAR data, I have determined there has been  
10 virtually no change in the alignment of the transmission lines  
11 as it extends across the Komir property.

12 And I agree that these are the types of things that  
13 need to be explained by an expert. But if you look at those  
14 diagrams and if you look at those representations on those  
15 exhibits, that's why Mr. Raines says he's looking at it. He's  
16 seen it. We have the evidence before the transmission towers  
17 were moved and after, and the alignment hasn't changed. So  
18 the --

19 THE COURT: Well, I say again, I found the testimony  
20 to be confusing. So I'll rephrase the question to you.

21 MR. LAMB: Okay.

22 THE COURT: So let's break it down. Komir's property  
23 is in the middle of a set of towers on each side of it, right?

24 MR. LAMB: Yes.

25 THE COURT: And north and south. Okay. So which ones

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1 got moved ten feet south? The north tower or the south tower?

2 MR. LAMB: The north towers.

3 THE COURT: Okay.

4 MR. LAMB: The towers all the way to the south didn't  
5 get moved at all.

6 THE COURT: Okay. Okay. So let's --

7 MR. LAMB: Only the north towers.

8 THE COURT: Okay. So --

9 MR. LAMB: And they only got moved ten feet south. So  
10 closer to the Komir property, but all within the transition  
11 statement (indiscernible) --

12 THE COURT: But use my compass -- use my compass  
13 example. And I understand that you weren't there any more than  
14 I wasn't there.

15 MR. LAMB: But --

16 THE COURT: And this gentleman wasn't really there,  
17 but he's got records. So if we --

18 MR. LAMB: Right.

19 THE COURT: if we overlayed a compass rose on the  
20 diagram before 2018, what's the compass bearing of the axis of  
21 the wire compared to presently? Is it the same angle, or is  
22 it -- because pure geometry says if you move one of the towers  
23 twenty feet at all off the axis, there's going to be a change  
24 in the angle. So.

25 MR. LAMB: Right.

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1 THE COURT: Unless you move it absolutely parallel to  
2 the original angle. So which is it?

3 MR. LAMB: UNIDENTIFIED MALE ATTORNEY 1: It -- it's  
4 the same. It'd be -- basically, it'd be -- if you were  
5 looking at, for example, 270 to 190, if that was the compass,  
6 it would stay -- it would stay 270 but 190. It would just be  
7 closer from the 270. But the alignment would remain the same,  
8 and the compass bearing would remain the same.

9 THE COURT: Okay. So using our airport example, if we  
10 positioned an airplane on the runway and we moved that airplane  
11 twenty feet down the runway, the angle of the takeoff pattern  
12 would be the same either way because we didn't change -- but  
13 you're telling me that if we -- that from the record and these  
14 exhibits that you refer to, I can determine that the angle  
15 didn't change?

16 MR. LAMB: Yes. If you look at A-1 and A-2. Right.

17 THE COURT: Okay.

18 MR. LAMB: And maybe this needs the explanation of the  
19 experts. And we're certainly going to have some depositions  
20 coming forward. I think those are all due by January 16th.  
21 But yes. That's why. And then that's why you have the  
22 testimony as to what that means. And that's why he says in his  
23 testimony that a comparison of the alignment is that there's  
24 been virtually no change in the alignment.

25 THE COURT: Well --

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1 MR. LAMB: (Indiscernible).

2 THE COURT: But see, virtually no change can mean a  
3 change. Whatever virtually means. So that's why, to me, my  
4 compass rose is a good example, if we could do it precisely.  
5 And maybe we can't do it precisely. So I guess what you're  
6 saying would -- did you ask Mr. Shahmirza if he'd concede that  
7 the alignment from the old position to the new position didn't  
8 take?

9 MR. LAMB: Your Honor, I asked him if he'd done any  
10 measurement. He said no. I'd asked him if he'd done any  
11 LIDAR. He said no. I said have you done anything by  
12 engineering? He said no. What he said was he just looked at  
13 it, and he could tell me that, geometrically, that had  
14 happened. I don't know what that means. But that's a question  
15 of fact that, I think, is established by, obviously, Mr. Raines  
16 (phonetic) and Mr. Suzinski (phonetic), who also testified  
17 about alignment. And I don't think that Mr. Shahmirza would be  
18 qualified to testify as to that. I understand that that's what  
19 he said, but I'm not sure how meaningful that is. It's  
20 certainly a question of fact at best.

21 THE COURT: Okay. But Mr. Lamb, what you seem to be  
22 saying is that I -- I'm not an expert either. But presumably,  
23 if I looked at these exhibits -- and I did look at them, but  
24 that was my point. I didn't understand them because they're  
25 confusing. And I must say the photographs of the towers are

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1 confusing, too. I couldn't even tell which one I'm -- which is  
2 which. But you're saying that if I put side-by-side the  
3 diagrams of before and after, I would come to the conclusion,  
4 at least, that the compass rose alignment is virtually the  
5 same.

6 MR. LAMB: Yes, Your Honor. And obviously --

7 THE COURT: Why don't you tell --

8 MR. LAMB: -- that would be --

9 THE COURT: Why don't you tell me about the height of  
10 the wire?

11 MR. LAMB: The height of the wire is also in there.  
12 And he basically testified that when he did the LIDAR, it was a  
13 difference between 4.9 feet in the northernmost portion, so  
14 closest to the Komir property. So if you're going from north  
15 to south, closest to the property, it's 4.9 feet lower. So it  
16 is lower on that pole. But then when you go across the line --  
17 because you got to look at the sag, Your Honor. It depends --

18 THE COURT: I know that.

19 MR. LAMB: If you --

20 THE COURT: I understand that. I understand.

21 MR. LAMB: And then over the property, as you go  
22 across the property, what he testified to -- and this is on  
23 paragraph 14 -- is that it is the same height. There's no  
24 change in height when it's directly over the portion that would  
25 be kind of at the lowest point, which is over what we referred

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1 to as the flood control channel, Your Honor.

2 THE COURT: I understand. I mean, I understand the  
3 sag. And obviously --

4 MR. LAMB: Right.

5 THE COURT: -- we don't have to be civil engineers to  
6 know if you have -- well, look, the Golden Gate Bridge has two  
7 towers, right? And it has a certain sag. And that sag  
8 changes. It actually did change, if you remember, if you're  
9 old enough to remember. When they had the anniversary of the  
10 bridge, they had to close the bridge because there were so many  
11 people on it. There was a change in the sag, so.

12 But the point is that the Komir property is where the  
13 sag is at because that's where their property is. So you're  
14 telling me that the expert says that at the tower, the cables,  
15 the wires start lower. But at least at the midpoint --  
16 therefore in the middle of Komir property -- there is virtually  
17 no change --

18 MR. LAMB: Yeah.

19 THE COURT: -- in what used to be there? Okay. So  
20 you would say that -- your argument then is there's no change  
21 in alignment or height that is measurable? Admittedly, within  
22 tiny amounts, there may be changes, but.

23 MR. LAMB: Well, to be clear, at the northernmost  
24 portion, which I don't think affects the property, the Komir  
25 property, it is 4.9 feet --



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1 THE COURT: I understand.

2 MR. LAMB: -- lower, so.

3 THE COURT: But if you're standing at that tower, how  
4 far is it until you get to the Komir property? And what is the  
5 height of the wire when it first crosses the Komir property? I  
6 presume it's less -- I mean, that it's no more than four  
7 point -- whatever feet it was before.

8 MR. LAMB: Right.

9 THE COURT: It --

10 MR. LAMB: 4.9 feet, Your Honor.

11 THE COURT: Yeah. I mean, it can't go up.

12 MR. LAMB: Right. And that's the point of the  
13 argument, is we say, in relation to the Guerra case and the  
14 Ward case, in terms of the de minimis or the minor amount of  
15 movement. And --

16 THE COURT: I understand that.

17 MR. LAMB: -- to be clear --

18 THE COURT: I understand.

19 MR. LAMB: -- that is equally available, not just to a  
20 prescriptive easement issue, but a statute of limitations  
21 issue.

22 THE COURT: Well, then, but --

23 MR. LAMB: And those cases -

24 THE COURT: But Mr. Lamb --

25 MR. LAMB: -- were (indiscernible) --

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1 THE COURT: -- if the fact -- if, as a matter of fact,  
2 I determine that there was no meaningful alignment change or  
3 height change, what is there else to have a trial about?  
4 Doesn't that mean therefore there can be no damage? What am  
5 I --

6 MR. LAMB: There is, yeah. Yes. Yes.

7 THE COURT: And if, on the other hand, I determine  
8 that the angle changed and it impact -- the angle between the  
9 towers and the height changed and it has an impact on the use  
10 of the property, unless you lose on the property tax question,  
11 then we're done, aren't we? If there's no change --

12 MR. LAMB: Right.

13 THE COURT: -- if there was no change in the --

14 MR. LAMB: Yes. Yes.

15 THE COURT: Okay.

16 MR. LAMB: Correct.

17 THE COURT: So how can there -- if you had the --

18 MR. LAMB: Sorry. When you said the word "done", I  
19 don't -- yes, sir. (Indiscernible) --

20 THE COURT: I know. But what I'm saying is --

21 MR. LAMB: -- (indiscernible).

22 THE COURT: Here's what I'm struggling with. Mr.  
23 Jacobson wants me to say that he wins the property tax. And I  
24 haven't decided that. Maybe he does. But if he doesn't, and  
25 if the facts are that, despite all the rhetoric, there was no

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1 measurable change in either the compass alignment of the wires  
2 as they cross the Komir property or the height of them, then  
3 there can be no damage if it was all consistent with the  
4 consent.

5 MR. LAMB: To be clear, if he prevails on the property  
6 tax issue, which I disagree with, that would handle the  
7 prescriptive easement issue. It does not handle the statute of  
8 limitations issue or the trespass. That still doesn't get him  
9 past this if there's no material change.

10 THE COURT: Okay. Okay. But again, I think we're  
11 going around in circles because a factual matter, the towers  
12 and the wires today are virtually -- and I'll use the word  
13 "virtually" as a lawyer -- virtually the same as they were in  
14 2017, there's nothing. There's nothing. There's no anything.  
15 There's no trespass.

16 MR. LAMB: Right.

17 THE COURT: Because --

18 MR. LAMB: There's no --

19 THE COURT: Because PG&E was there for seventeen years  
20 with the owner's consent. And if there's no trespass, there's  
21 also no prescriptive anything. There is use consistent with a  
22 consensual easement.

23 MR. LAMB: Right. Right.

24 THE COURT: So what are we having a trial about? And  
25 so what -- if we have a trial --

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1 MR. LAMB: Well, I --

2 THE COURT: -- and that trial --

3 MR. LAMB: I --

4 THE COURT: -- the experts satisfy the finder of fact,  
5 well, then there's nothing else to talk about.

6 MR. JACOBSON: Well, you'd have a trial on all these  
7 issues that you're debating back and forth and that Mr. Lamb is  
8 saying he'll bring the experts to trial. But you will also  
9 decide whether there was a revocation of consent. You just  
10 said that they were there for the seventeen years with consent.  
11 My point to you that's not sticking is that the significance of  
12 the moving, relocation, reconstruction of what was there before  
13 resulted in a revocation of consent. You can't --

14 THE COURT: But Mr. Jacobson, what I'm having trouble  
15 with this argument -- and maybe I'm just dense today -- and I  
16 think I might have mentioned to you, I'm influenced in part  
17 because I have another PG&E case -- Mr. Rupp is familiar with  
18 it -- where the property owner has the tower on his property.  
19 And that's different. But Komir never had the towers on its  
20 property. And so from the beginning of -- a century ago, those  
21 towers were constructed. And those towers were connected by  
22 wires that cross property that ultimately became the Komir  
23 property. And before that, it was the Hildebrand (phonetic).  
24 And God knows who it was before that.

25 But from the day Komir bought the property, it knew

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1 that it had those towers next door, both sides of its property.  
2 And it knew where those wires were, and it consented to it.  
3 And if the owner of the towers repositions the towers, but the  
4 crossing of the Komir property and the height of the wires has  
5 not changed, then I don't think there has been any -- I don't  
6 think he can unconsent. There's nothing he can do.

7 In other words, stated differently, if he goes out and  
8 says, what are you guys doing? And they said we're moving the  
9 towers on our property, and the wires that cross your property  
10 will be in the same alignment and at the same height, he might  
11 not have been happy about it, but he might not have had any  
12 recourse.

13 Now, what am I missing about that, Mr. Jacobson? What  
14 does it mean for him to say I don't like your moving those  
15 towers when it doesn't affect his enjoyment of his property  
16 with the wires crossing his property?

17 MR. JACOBSON: Because the lines do and did cross his  
18 property. And they crossed it at different height. And so the  
19 factual basis upon which he granted his consent to the wires  
20 crossing the property where they were changed. It was  
21 different. I don't consent to that.

22 THE COURT: He doesn't consent to it. But the  
23 evidence that Mr. Lamb just summarized is the height didn't  
24 change.

25 MR. JACOBSON: But you're assuming that. That's a

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1 factual issue for trial.

2 THE COURT: And you have evidence to prove contrary?

3 MR. JACOBSON: Sure. We got PG&E's representatives  
4 saying they did. You've got Shahmirza saying --

5 THE COURT: Again, we keep saying it. I mean --

6 MR. JACOBSON: -- (indiscernible).

7 THE COURT: -- I got to tell you, when you keep  
8 telling me somebody out on the field one day said we're moving  
9 this thing eleven feet, it doesn't make it so.

10 MR. JACOBSON: No. But it impacts his consent or not.  
11 It is his reality. And it wasn't just somebody out in the  
12 field. It was the construction manager --

13 THE COURT: Okay. So --

14 MR. JACOBSON: -- who was (indiscernible) --

15 THE COURT: -- the construction manager says Mr.  
16 Shahmirza, we're going to lower that wire eleven feet. And  
17 Shahmirza says, well, no, you're not, over my dead body. So  
18 what happens is they didn't move it eleven feet, so says Mr.  
19 Lamb and his expert. I'll accept the fact that your client  
20 hasn't conceded something. But when a work person, when he  
21 says that I'm going to lower it eleven feet, but in fact  
22 doesn't lower it eleven feet, then you can't then argue that he  
23 didn't consent to the nonlowering at eleven feet because they  
24 didn't lower it eleven feet if that's the fact.

25 So I'm sorry to beat this to death. But to me, it's

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1 very, very important. So let's go ahead and switch gears.

2 Mr. Lamb, make the argument you wish to make -- it's  
3 in the briefing, but make it again -- about the property tax.  
4 And then I'm going to let Mr. Jacobson restate the same  
5 argument. But I will tell you that I've read the cases and  
6 I've read the briefs. But I want -- I don't want to give you  
7 the impression that I'm not paying attention to your arguments  
8 here.

9 MR. LAMB: Your Honor, I think that this has been  
10 fully briefed by both sides. And it really relates to this  
11 Hansen case, which I think is distinguished. And if the Court  
12 just looks at the Zimmer case, at the Cleary/Tremble case, and  
13 at the Hairmunino (phonetic) case -- I cannot pronounce that.  
14 I apologize. But it's very clear that this issue of the taxes  
15 is not dispositive. Okay? And it is not something that  
16 Shahmirza can rely on. And regardless of that, it still  
17 wouldn't matter because it wouldn't get him past the statute of  
18 limitations in relation to the trespass issue, Your Honor.

19 THE COURT: Just refresh me then about -- this is  
20 something that we talked about a moment ago. What is the  
21 statute of limitations argument --

22 MR. LAMB: Sure.

23 THE COURT: If the --

24 MR. LAMB: The statute of --

25 THE COURT: If the Hansen case --

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1 MR. LAMB: -- limitations argument --

2 THE COURT: Wait. If the Hansen case is a derelict  
3 and these other cases control, what is the statute of  
4 limitations question?

5 MR. LAMB: The statutes of limitations, it really  
6 relates to the Guerra and Ward cases more. But that's the  
7 issue that, clearly, he purchased this property in 2000. It  
8 was there from 2000 to 2018. So he's basically not objecting,  
9 consenting -- whatever phrase you want to use it -- to the  
10 existence of these transmission lines for seventeen, eighteen  
11 years. Okay?

12 Now he's objecting. But there hasn't been a material  
13 change. And if you look at those cases, if you look at Guerra  
14 and if you look at Ward and you look at Otay Mesa, it's pretty  
15 clear that the statute of limitations is going to bar him from  
16 an action, whether it's in trespass or a nuisance. It won't  
17 matter --

18 THE COURT: Okay.

19 MR. LAMB: -- because there hasn't been a --

20 THE COURT: Okay.

21 MR. LAMB: -- significant change.

22 THE COURT: I guess, what I think I got, in cross  
23 purposes with you is, when I read your briefs originally -- and  
24 again, I won't pretend that I read each and every case, but I  
25 read the arguments about the cases -- it seemed to be a



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1 nonissue because of the consent. In other words, to me, every  
2 time you said statute of limitations, I say but consent is a  
3 nonissue. So to me, the only statute of limitations that is of  
4 any significance here is, did Mr. Shahmirza act promptly when  
5 he had something to complain about? And the answer is yes, he  
6 did, in terms of filing the state court suit. And I  
7 misstated -- I mean, I mischaracterized your argument. So I'm  
8 going to restate it again.

9 Your argument is that the property tax question is not  
10 dispositive. California law said that the statute of  
11 limitations to complain about the use of the property ran years  
12 ago because the debtor -- I mean, because of the neighbor --  
13 Mr. Shahmirza, consented. And therefore, when he complains  
14 later, he can't complaint about something that is not a  
15 departure from what was the consent.

16 So in other words, your argument is repositioning the  
17 towers and adjusting the wires slightly is nothing more than a  
18 tweak, and it's consistent with the consent?

19 MR. LAMB: Correct, Your Honor.

20 THE COURT: Okay. Okay.

21 MR. LAMB: And a material deviation, that would be a  
22 different story.

23 THE COURT: Yeah. Yes. I understood.

24 MR. LAMB: Yeah.

25 THE COURT: And okay. Okay.

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1           So now, anything further on the -- well, you said on  
2 the briefing on the Hansen case.

3           And so Mr. Jacobson, what I thought when I first  
4 learned about prescriptive easements -- and again, I hate to  
5 sound like I'm telling you war stories. But I actually did  
6 have -- I think I might have told you this. I actually tried a  
7 case involving a prescriptive easement out near SFO years ago  
8 when I was a new judge. And I learned -- and I did the site  
9 inspection. And I think I learned then about the notion of  
10 adverse possession requires the tax, but prescriptive easement  
11 doesn't.

12           And it was only with your briefing in the Hansen case  
13 that at least one court has kind of come up with some sort of a  
14 constructive -- or whatever the language was -- that it's  
15 constructively the same as adverse possession. And you're  
16 hanging your hat on that principle, I believe. And if I don't  
17 agree with you, then I guess we're going to have a trial on  
18 whether there really was a material change, the consent.

19           But go ahead and make whatever additional argument you  
20 want about the property tax in Hansen. But I'll leave it at  
21 that.

22           MR. JACOBSON: My turn?

23           THE COURT: Yes.

24           MR. JACOBSON: So I want to use your comment about get  
25 electrocuted (indiscernible) --

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1 THE COURT: Okay.

2 MR. JACOBSON: -- to springboard into this discussion.

3 There is the distinction that you note between an occupation  
4 that is tantamount to a claim of right that is adverse  
5 possession and requires payment of taxes and a use that is  
6 shared that is not required -- does not have the requirement  
7 for payment of taxes. And there is a statutory distinction.

8 Civil Code Section 701 relates to estates. And it  
9 pertains to the payment of taxes, the adverse possession issue.  
10 There is Civil Code Section 801 that that defines ordinary  
11 easements. And Section 801, in defining what it calls  
12 easements, refers to, for example, right of pasture, right of  
13 fishing, right of taking game, right of way; use related  
14 activities on the property.

15 And I'd like to walk through the Hansen opinion with  
16 you. Hansen was a case where the facts were that there were  
17 two adjacent landowners who were farmers. They raised crops.  
18 The land was contiguous. Hansen had a larger ranch of 382  
19 acres. Sandbridge (sic) had a smaller one of 250 acres. And  
20 the dispute related to a ten-acre parcel of the smaller  
21 Sandbridge (sic) property.

22 Hansen, with the larger parcel, had farmed the entire  
23 property and the ten acres for many years. And he had rotated  
24 crops during those years. And then at a point, on the ten  
25 acres that was on the other person's property, he planted

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1 pistachio trees, not rotating crops, but permanent trees.

2 Hansen claimed that he had acquired a prescriptive easement on  
3 the ten acres and could keep his trees there without paying the  
4 taxes, that he had established a right of possession.

5 Hansen case was very careful and detailed in reviewing  
6 the difference between an exclusive occupation of the property  
7 as opposed to a nonexclusive use. The case talks about  
8 property interests like estates and easements. Both can be  
9 acquired by occupation. But it says there is a difference  
10 between a prescriptive use of land culminating in an easement  
11 and in corporeal interest and adverse possession, which creates  
12 a change of ownership. Corporeal interest. The former deals  
13 with the use of land, the other with possession.

14 So how do you distinguish which is which? And the  
15 critical issue of proof is that for the use -- for the  
16 possession, when the claim is for exclusive possession, you  
17 need to pay the taxes. So that's why the difference is  
18 significant. And the case notes, because of the taxes element,  
19 it is more difficult to establish adverse possession than a  
20 prescriptive easement. And --

21 THE COURT: Well, I mean, let me interrupt you. So  
22 the trees were permanent. So --

23 MR. JACOBSON: Yes.

24 THE COURT: -- the neighbor on the smaller property  
25 couldn't use the property for anything?

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1 MR. JACOBSON: Exactly.

2 THE COURT: Okay. All right.

3 MR. JACOBSON: Exactly.

4 THE COURT: So functionally, the owner of the  
5 property, the original owner, was excluded from any enjoyment  
6 of the property?

7 MR. JACOBSON: And the language --

8 THE COURT: Right?

9 MR. JACOBSON: -- of the case is equivalent.

10 THE COURT: Okay.

11 MR. JACOBSON: I mean, it --

12 THE COURT: Okay.

13 MR. JACOBSON: So the Court commented, unsurprisingly,  
14 claimants have often tried to obtain the fruits of adverse  
15 possession under the guise of a prescriptive easement to avoid  
16 having to satisfy the tax element. That is, they seek  
17 judgments employing the nomenclature of easement, but creating  
18 the practical equivalent of an estate. The law prevents this  
19 sophistry. So then the question is, again, whether it is the  
20 practical equivalent or whether it is shared.

21 And the opinion discusses that, saying, in determining  
22 that question, courts look to the extent to which the  
23 conveyance limits the uses available to the grantor. An estate  
24 entitles the owner of the exclusive occupation a portion of the  
25 Earth's surface. That is, Sandbridge (sic), the smaller

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1 fellow, would not be able to use the disputed land for any  
2 practical purpose. This goes back to your comment about get  
3 electrocuted.

4 And it goes on because the interest sought by the  
5 larger fellow was the practical equivalent. They were required  
6 to meet the requirement of payment of the taxes.

7 THE COURT: Well, is there any -- excuse me. I  
8 understand where you're going, and I don't make light of the  
9 danger of high voltage lines. But is there any evidence that  
10 in all the years that your client owned the property, that he  
11 didn't have access to and some use of the property?

12 MR. JACOBSON: Well, no. This is the critical issue.

13 THE COURT: Could he grow --

14 MR. JACOBSON: (Indiscernible) --

15 THE COURT: Could he grow pistachio trees on the  
16 property?

17 MR. JACOBSON: No. But he can't -- he can't build in  
18 that air space. And Civil Code Section 820 says that every  
19 owner of property is entitled to possession and use of the land  
20 and everything below and above it. So the space that is  
21 occupied by those transmission lines, Komir has a statutory  
22 right to occupy. So now, can it occupy that space? Is it a  
23 shared use, or is it the kind of exclusive, practical  
24 equivalent of an estate so that Komir can't use that property?  
25 Only PG&E is and claims the right to own it -- or to use it?

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1 THE COURT: But --

2 MR. JACOBSON: So -- go ahead.

3 THE COURT: But is there proof that he can't use it?  
4 Again, I'm not going to pretend that he's going to grow  
5 pistachio trees there. But is there any evidence in the record  
6 that -- and I understand that a portion of the property has a  
7 flood canal on it, so I'm not going to talk about whether he  
8 can raise fish in the flood canal. Is there any -- is there  
9 any use -- and is there any proof, rather, that he can't use  
10 the property for anything?

11 MR. JACOBSON: So that's a really easy question to  
12 answer.

13 THE COURT: Okay.

14 MR. JACOBSON: You look at PG&E's opposition, page 11,  
15 lines 26 to 28. The significant but bewildering statement is,  
16 "the fact that the transmission lines transverse only aerial  
17 space over the Komir property makes them inherently  
18 nonexclusive as claimant is still able to use his entire  
19 parcel, including the land below the lines and all subsurface  
20 area".

21 They are saying to you this is not an exclusive use by  
22 us of the airspace that Komir is entitled to occupy under 829  
23 because he can go use the land and dig the minerals under the  
24 ground. That statement in and of itself is a judicial  
25 admission that PG&E and only PG&E can use that space.

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1 THE COURT: Well, I guess I don't understand it. Only  
2 PG&E can you use airspace.

3 MR. JACOBSON: Pardon me?

4 THE COURT: But is PG&E's statement an untrue  
5 statement?

6 MR. JACOBSON: Well --

7 THE COURT: Can --

8 MR. JACOBSON: -- (indiscernible) correct statement  
9 that Komir can use the land and the subterranean rights. It is  
10 an absolutely -- it's an admission that Komir cannot use the  
11 aerial space.

12 THE COURT: Well, I mean, I don't think we need an  
13 admission to -- for just common sense, with high-powered  
14 voltage lines going over your property.

15 MR. JACOBSON: Exactly.

16 THE COURT: But therefore what?

17 MR. JACOBSON: Exactly.

18 THE COURT: But --

19 MR. JACOBSON: Precisely.

20 THE COURT: But that's what he bought. That was on  
21 the property when he -- okay. I understand your point.

22 MR. JACOBSON: Well, no, no. The on the -- I'm sorry.

23 THE COURT: Go ahead.

24 MR. JACOBSON: The on-the-property part doesn't matter  
25 on this. This is a question of whether their claim to have



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1 them on the property -- whether they have a prescriptive right  
2 to have them on the property. And they can only have, at that  
3 prescriptive right, whether it's against Hildebrand, Komir, or  
4 anybody else, if they paid the property taxes associated on the  
5 property. California is clear. Different states have  
6 different --

7 THE COURT: No, I know that. I know that. I know  
8 that. But look. What you want me to do is to say that high-  
9 powered lines that go through the air above someone's property  
10 are like pistachio trees that preclude the legal owner from  
11 using the property. And you know what? I bet the Hansen case  
12 doesn't say whether they could do a mine underneath the  
13 pistachio trees.

14 But your arguing is that because only PG&E can occupy  
15 the airspace, because it has the power lines, therefore it  
16 should have paid the property tax, and therefore -- I mean  
17 that's a bit of a strange argument. You're saying that PG&E  
18 should have paid the property tax because they have the wires  
19 that cross over the property. And even though PG&E argues that  
20 your client can use the property -- and you haven't proven that  
21 he can't --

22 MR. JACOBSON: Because the airspace --

23 THE COURT: -- use it.

24 MR. JACOBSON: Because --

25 THE COURT: There's no public safety rule that says

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1 you can't go on the property under the wires. It might be  
2 stupid to do it, but you don't do it.

3 MR. JACOBSON: No. He's --

4 THE COURT: I mean, he can do it. Right?

5 MR. JACOBSON: He's entitled to build a ten-story  
6 office building there if he wants. He's entitled to use  
7 whatever -- to do whatever he wants with that property that  
8 would be in that airspace. It owns it. He's entitled to it.  
9 And PG&E is only entitled to occupy it under prescriptive  
10 rights under Section 325 of --

11 THE COURT: Mr. Jacobson, could he build a ten-story  
12 office building there in 2010, when he consented to PG&E's  
13 occupying the airspace with the power lines?

14 MR. JACOBSON: This is in various papers, Judge. He  
15 didn't have any plans at that point.

16 THE COURT: That isn't what I asked you.

17 MR. JACOBSON: What?

18 THE COURT: Could he?

19 MR. JACOBSON: Yeah.

20 THE COURT: No, of course not. You know he could not  
21 have.

22 MR. JACOBSON: Well, it's --

23 THE COURT: Because PG&E owned the airspace or had the  
24 right to the airspace.

25 MR. JACOBSON: Well, that begs the question.

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1 THE COURT: Okay.

2 MR. JACOBSON: PG&E did not have a right to the  
3 airspace. It didn't pay the taxes and it doesn't have any  
4 valid recorded easements.

5 THE COURT: Okay. Listen --

6 MR. JACOBSON: I mean, this is a far more dramatic  
7 illustration than pistachio trees.

8 THE COURT: Well, that's for me to decide, whether the  
9 pistachio trees metaphor is closer in point on the law. And I  
10 guess what I have to decide is which of the California  
11 authorities is more persuasive. And I'll do that. So I mean,  
12 I understand your argument much better today than I did before,  
13 both on the subject of the alignment and height that Mr. Lamb  
14 and you and I have all discussed, and on this one, too. And so  
15 I'm going to do what I'm supposed to do. I'm going to reflect  
16 on the argument, and I'm going to revisit the cases and take  
17 the matter under advisement. And that's the best I can do.  
18 And --

19 MR. JACOBSON: Can I have a couple more minutes?

20 THE COURT: Yes, sir. Yes. Please do.

21 MR. JACOBSON: So staying with Hansen. It discusses  
22 this practical equivalent of an estate that -- you used a  
23 similar phrase. It then goes on to distinguish what is not a  
24 practical equivalent, what is not in the nature of a possession  
25 that requires compliance with adverse possession payment of

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1 taxes. And it says all easements involve the use of other  
2 people's property. The question is, what rises to this  
3 possessor level?

4 And it takes, for example, the common roadway where  
5 you have a landowner. There's a road that goes across it. And  
6 the issue is people have used it in the past and they claim  
7 that they've got a right to continue, and the landowner wants  
8 to block them or limit them. Those are very common cases. And  
9 in that instance, the Hansen case focuses on exclusivity or not  
10 and says an easement is nonexclusive if the servient landowner  
11 shares in the benefit of the easement can continue to use the  
12 road himself.

13 So that was the difference with pistachio trees.  
14 Sandbridge (sic) couldn't go in and grow his own pistachio  
15 trees. It was exclusive. And so same thing here. Komir does  
16 not share in the benefit.

17 THE COURT: Well, again, I'm sorry to beat this to  
18 death. But you just got through arguing -- and I'll state it  
19 again. If Komir wanted to grow flowers on the property,  
20 tulips --

21 MR. JACOBSON: Yeah.

22 THE COURT: -- could he prevent him from growing  
23 tulips on the property? No. Right? They might say we don't  
24 think that's a good idea to grow tulips under the power lines.  
25 But they couldn't prevent him from doing it, could they?

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1 MR. JACOBSON: No. But --

2 THE COURT: Okay.

3 MR. JACOBSON: -- they are preventing him from  
4 building a six-story building there.

5 THE COURT: I got it. They are protecting -- and what  
6 you want me to do is to say that when Hansen couldn't -- when  
7 Hansen couldn't prevail because he had grown his pistachio  
8 trees because he hadn't paid the taxes -- PG&E hasn't paid the  
9 taxes, therefore it can't claim exclusive right to the power  
10 lines. But that's now what we're talking about. I mean,  
11 that's what you're arguing about. You've conceded that PG&E  
12 can't interfere with Mr. Komir's -- I mean, Mr. -- sorry -- Mr.  
13 Shahmirza's growing tulips on the land. But listen, I got your  
14 point. I --

15 MR. JACOBSON: Look at Civil Code 829.

16 THE COURT: I will.

17 MR. JACOBSON: Komir is entitled to be in the same  
18 space as those transmission lines are. The statute says he  
19 owns that space where those transmission lines are. So if PG&E  
20 wants to be able to exclusively occupy the space that Komir is  
21 entitled to occupy, it has to pay the taxes.

22 THE COURT: And how does one pay the taxes on where a  
23 power line is?

24 MR. JACOBSON: You pay the taxes on the property is  
25 what Civil Code --

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1 THE COURT: Well, how do you reconcile the fact that  
2 PG&E should have paid the property taxes for the airspace but  
3 didn't have to pay the property taxes for the land space?  
4 Doesn't that sound a little bit --

5 MR. JACOBSON: No.

6 THE COURT: -- contradicting?

7 MR. JACOBSON: No. No. That is --

8 THE COURT: No?

9 MR. JACOBSON: -- one of the burdens of establishing a  
10 prescriptive easement.

11 THE COURT: Okay.

12 MR. JACOBSON: If it's not separately assessed, you  
13 have to pay for the taxes levied on the property.

14 THE COURT: Okay. I got it.

15 MR. JACOBSON: And it doesn't make any sense.

16 THE COURT: I got the point.

17 MR. JACOBSON: No tax assessor would come out and look  
18 at land and see if there's an easement dispute and, because  
19 PG&E's lines are there, separately assess that airspace.

20 THE COURT: So to --

21 MR. JACOBSON: (Indiscernible) --

22 THE COURT: To finish the point, if Komir had actually  
23 put something on the land, under the tower, under the wires,  
24 and even had earned revenues from it, he would be tax-free  
25 because he's got this power line company that's got the wires

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1 over it. Therefore, they have to pay the taxes, and he doesn't  
2 have to, even though he generates income from it and doesn't  
3 have to share that income. That's what you think? You concede  
4 that point?

5 MR. JACOBSON: That's what the law says.

6 THE COURT: So you concede the point?

7 MR. JACOBSON: Yes.

8 THE COURT: Okay. (Indiscernible).

9 MR. JACOBSON: Because it's not an economic analysis.  
10 It's a legal statutory --

11 THE COURT: I --

12 MR. JACOBSON: -- requirement.

13 THE COURT: I understand, Mr. Jacobson.

14 MR. JACOBSON: You don't get to keep your towers  
15 there, your lines there, unless you comply with Section 325.  
16 It is --

17 THE COURT: Okay.

18 MR. JACOBSON: It doesn't say you have to pay the  
19 taxes, but you can go to the assessor's office and figure out  
20 how much is the proration because -- there's nothing that says  
21 that. And counsel for PG&E was saying that -- they were  
22 relying on case called Otay, O-T-A-Y.

23 THE COURT: Um-hum.

24 MR. JACOBSON: Hansen specifically repudiates that  
25 case. So we decline to follow it. It's a bad ruling. It

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1 doesn't make sense. It looks at the facts in that case and  
2 says that it was the practical equivalent of estate and should  
3 only have been permitted upon satisfaction of the elements of  
4 adverse possession. So that's the case they're relying on to  
5 try to persuade you that they are not barred by the tax --  
6 failure to pay the taxes.

7 THE COURT: Okay.

8 Mr. Lamb, anything further?

9 MR. LAMB: Well, Your Honor, clearly, Hansen is  
10 distinguishable. It's not a prescriptive easement case in  
11 relation to utility, and Otay was. And that's why it wasn't  
12 followed, because Hansen was a completely different set of  
13 circumstances. It had nothing to do with prescriptive  
14 easements for utilities.

15 But I think it's fully briefed, Your Honor. I would  
16 ask the -- I understand that you're taking this under  
17 submission. I would ask you to consider setting a status  
18 conference regarding scheduling because, obviously, there's  
19 going to be something else post your order. And we have a  
20 deadline, at least right now, to do expert depositions by, I  
21 believe, January 16th. So to me, it would make sense to do  
22 some type of status report on scheduling and a conference maybe  
23 after that, if that makes sense to the Court.

24 MR. JACOBSON: I think it would be helpful to have the  
25 Court's decision before we engage in the deposition so that we



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1 have some parameters for --

2 THE COURT: Well, yeah. I do, too. And I'll do my  
3 best to -- and I take some pride in trying to make decisions in  
4 a hurry. This is not the best time because of staffing and so  
5 on. But I'm not going anywhere. Can you just -- can't you two  
6 just agree to delay (indiscernible)?

7 MR. LAMB: I will represent that I will extend the  
8 dates for expert depositions. I mean, we had asked for them,  
9 and they hadn't provided them yet. I assume it's because what  
10 Mr. Jacobson just said. He wants a ruling first, which is very  
11 reasonable. I'm happy to talk to Mr. Jacobson.

12 And we can move that, Mr. Jacobson.

13 THE COURT: Ms. Siperrotta (phonetic), what is our  
14 next PG&E regular date? Remind me again. Is that January --

15 THE CLERK: 9th.

16 THE COURT: Huh?

17 THE CLERK: January 9th, Your Honor.

18 THE COURT: I'm going to -- I'll tell you what. For  
19 now, gentlemen, I'd like you to work on seeing if you can just  
20 agree to -- for the convenience of the witnesses and  
21 yourselves. And I'm going to continue -- I'm going to have a  
22 status conference in this matter on January 9th at 10 o'clock.  
23 And maybe I'll have a ruling by then, maybe not. But if I  
24 don't have a ruling by then, I certainly can give you a better  
25 time frame on what we're doing. And --

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1 MR. LAMB: And then we're vacating the date that we  
2 had earlier for the January 16th by the expert depositions?

3 MR. JACOBSON: Well, we're going to --

4 THE COURT: No. I'm --

5 MR. JACOBSON: -- talk about that.

6 THE COURT: Yeah. I'm asking you to talk about it. I  
7 mean, I --

8 MR. LAMB: Oh.

9 THE COURT: -- think that -- I think it makes good  
10 sense. Obviously, my decision here is important for me to do  
11 it right. It's important for you and your clients. And I'm  
12 mindful of that. But I think, like everything else, if I made  
13 you a ruling at the end of this hearing, you might very well  
14 think that I haven't given your arguments a lot of thought.  
15 And you know what? I'm going to give your argument a lot of  
16 thought because both of you have clarified this matter. And  
17 it's a matter that I've lived with, not as long as you two  
18 have, but this case is something I'm quite familiar with. And  
19 the discussion that each of you had with me has been very  
20 helpful to have me focus on it.

21 Again, there's no guarantee that I'll come out with  
22 the right result, but I'm going to do my best to come out with  
23 the result required by the law. And I thank you for your time  
24 and your diligence and your representation of your clients'  
25 efforts. And I wish you all happy holidays. The matter is

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submitted.

Mr. Rupp, thank you for your assistance.

MR. JACOBSON: Could I ask the name of the other case  
to which you referred that involves prescriptive easement?

THE COURT: Well, it's Mr. Rupp -- it's a case  
involving a gentlemen named Mr. Addington, and it's on appeal.  
It's on appeal to the District Court.

It's not a BAP, right, Mr. Rupp?

MR. RUPP: It's the District Court, Your Honor.

THE COURT: Oh, that's right.

Mr. Jacobson, Mr. Addington appealed to BAP, and the  
PG&E opted out to the District Court. So it's a case that --  
well, Mr. Rupp can -- I mean, I can give you the docket  
numbers.

Mr. Rupp, just as a courtesy, give him the --

Mr. Jacobson, it's a separate adversary sitting on our  
PG&E docket. And Mr. Addington bought property with a tower on  
it in Piedmont. And he took the position that he could  
terminate PG&E's entitlement and demand royalties from them,  
and I ruled against him on that. And so he is appealing the  
decision. So it's not analogous to your situation in the sense  
of overhead versus not. I mean, this man bought the house and  
lives there with his family. It's a residence. But it's a  
residence that has a great, big, giant power line on it.  
Probably is the same kind of -- well, I don't know.

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1 Mr. Rupp, I don't know the technical saying. It's a  
2 high voltage line, right?

3 MR. JACOBSON: Well, I'm just asking for the docket  
4 number or some way to --

5 THE COURT: Yeah.

6 MR. JACOBSON: -- find it.

7 THE COURT: No, no. You'll see --

8 MR. RUPP: (Indiscernible).

9 THE COURT: You'll see a lot. You'll see ruling in  
10 there and briefing and a lot of information. So you're welcome  
11 to --

12 MR. JACOBSON: (Indiscernible) --

13 MR. RUPP: I'll --

14 MR. JACOBSON: Would you send it?

15 MR. RUPP: I will send the case number of the  
16 adversary proceeding and point you in that direction, Mr.  
17 Jacobson.

18 THE COURT: Yeah. We're not trying to hide it from  
19 you. It's all there.

20 Okay. Happy holidays to all of you and your family.  
21 Thank you for your time.

22 Thank you to my staff. I'm going to conclude the  
23 hearing and go offline. Have a good --

24 MR. JACOBSON: Thank you, Your Honor.

25 THE COURT: -- (indiscernible).

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1 MR. LAMB: Thank you, Your Honor. Happy holidays.

2 THE COURT: Thank you.

3 (Whereupon these proceedings were concluded)

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## C E R T I F I C A T I O N

I, Amarah Yang, certify that the foregoing transcript is a true and accurate record of the proceedings.

*Amarah Yang*

/s/ AMARAH YANG, CDLT-306

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Date: December 21, 2023